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2001-07-17 15:56:34

Cook County Recorder 39.50



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Recording requested by
and after recording return
to:

Gary A. Goodman, Esq.
Akin, Gump, Strauss,
Hauer & Feld, L.L.P.
590 Madison Avenue
New York, New York
10022

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SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made as of the 17 day of June, 2001, among LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE a German banking institution, having an address at 420 Fifth Avenue, 24th Floor, New York, New York 10018-2729 ("Lender"), LASALLE BANK NATIONAL ASSOCIATION (f/k/a LaSalle National Bank, N.A.), as successor trustee to LaSalle National Trust, N.A., not individually but as trustee under a trust agreement dated November 21, 1986 and known as Trust No. 111774, having an address at 135 South LaSalle Street, Chicago, Illinois 60603 ("Landlord") and Protocare Trials, Inc. (formerly known as "Protocare, Inc."), a Delaware corporation, having an address at 515 North State Street, Chicago, Illinois ("Tenant");

WITNESSETH:

WHEREAS, Landlord is the owner of the real property, together with the building and other improvements located thereon (collectively, the "Property") located at 515 North State Street, Chicago, Illinois, and more particularly described on Exhibit A annexed hereto and by this reference made a part hereof; and

WHEREAS, Lender is the Mortgagee under that certain Mortgage, Security Agreement and Fixture Filing (as the same may be amended, supplemented, extended, renewed, restated, replaced, substituted or otherwise modified from time to time, including without limitation, modifications which increase the principal amount secured thereby, the "Mortgage") dated as of July 17, 2001, which encumbers the Property and which Mortgage has been recorded in the real property records, Cook County, Illinois, as Document No. _____ on July 17, 2001; and

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WHEREAS, Landlord and Tenant have entered into a Lease, dated as of November 6, 1993, as amended by that certain Assignment dated as of August 18, 1995, demising a portion of

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the Property (as the same may be amended or supplemented from time to time with the written consent of Lender, the "Lease"); and

WHEREAS, Lender and Tenant wish to enter into this Agreement (i) to confirm the subordination of the Lease to the lien of the Mortgage, (ii) to provide that Tenant's possession of the Demised Premises (as hereinafter defined) will not be disturbed in the event of foreclosure, (iii) to provide that Tenant will attorn to Purchaser (as hereinafter defined) and Purchaser will recognize Tenant and (iv) to provide for certain other matters;

NOW, THEREFORE, in consideration of the premises and the execution of this Agreement by the parties, Lender and Tenant hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

Demised Premises. The portion of the Property now or hereafter demised under the Lease.

Person: An individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

Purchaser: Any Person acquiring the Property (i) in any foreclosure or any action or proceeding (judicial or nonjudicial) instituted under or in connection with the Mortgage, (ii) by delivery of a deed or assignment given in lieu of foreclosure, or (iii) by order of the United States Bankruptcy Court, and, with respect to (i), (ii) and (iii), such Person's successors and assigns.

2. Subordination. The Lease and Tenant's interest thereunder is now and at all times shall continue to be subject and subordinate in each and every respect (except as otherwise expressly provided in this Agreement) to the Mortgage and to the lien of the Mortgage.

3. Nondisturbance. So long as the Lease is in full force and effect and there exists no default under the Lease that (i) continues beyond the expiration of any applicable notice and grace period and (ii) would permit Landlord to terminate the Lease, (a) neither Lender nor Purchaser shall terminate the Lease nor shall Lender or Purchaser disturb or affect Tenant's leasehold estate, use and possession of the Demised Premises in accordance with the terms of the Lease or any rights of Tenant under the Lease by reason of the subordination of the Lease to the Mortgage or in any foreclosure action or any other action or proceeding (judicial or otherwise) instituted under or in connection with the Mortgage, unless such right would have independently existed pursuant to the Lease and (b) Tenant shall not be named or joined in any foreclosure action or other proceeding to enforce the Mortgage unless such joinder shall be required by law.

4. Attornment and Recognition.

(a) If the interests of Landlord under the Lease shall be transferred to a Purchaser, (x) Tenant shall be bound to Purchaser under all of the then executory terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected by Tenant in accordance with any option therefor in the

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Lease, with the same force and effect as if Purchaser were the landlord under the Lease, (y) Purchaser shall recognize the rights of Tenant under the Lease and (z) the Lease shall continue in full force as a direct lease between Tenant and Purchaser and the respective executory rights and obligations of Tenant and Purchaser, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as set forth therein; provided that, Purchaser shall not be:

(i) liable for any act or omission of or default by Landlord or any prior landlord under the Lease, except to the extent such default continues after Purchaser succeeds to Landlord's interest under the Lease beyond any applicable notice and grace periods available to Purchaser under the Lease or this Agreement for the cure of such default;

(ii) subject to any credits, claims, setoffs or defenses which Tenant might have against Landlord or any prior landlord as a result of any acts or omissions of Landlord or any prior landlord;

(iii) bound by any fixed rent, basic rent, additional rent or other amounts which Tenant may have paid to Landlord more than thirty days in advance of the month to which such payments relate, and all such prepaid rent and additional rent shall remain due and owing without regard to such prepayment;

(iv) bound by any amendment or modification of the Lease made after the date hereof without Lender's prior written consent;

(v) responsible for the making of repairs in or to the Property in the case of damage or destruction of the Property or any part thereof due to fire or other casualty or by reason of a condemnation, unless Purchaser (as Landlord under the Lease) shall be obligated under the Lease to make such repairs and shall have received insurance proceeds or condemnation awards sufficient to finance the completion of such repairs; provided, however, that within 90 days of the Casualty, Purchaser will notify Tenant as to whether or not Purchaser will accept responsibility to repair or rebuild pursuant to this clause (v) and Section 11A. of the Lease. If Purchaser does not accept responsibility for such repair or rebuilding, Tenant shall be entitled to terminate Lease.

(vi) obligated to make any payment to Tenant required to be made by Landlord prior to the date on which the interests of Landlord under the Lease are transferred to Purchaser except for (x) the timely return of any security deposit actually received by Purchaser and (y) the credit or refund to Tenant as provided in the Lease of any prepayment of rent or other charges paid by Tenant if such prepayment is actually received by Purchaser;

(vii) liable under any indemnity provision of whatever nature contained in the Lease, including, but not limited to, any environmental indemnification, except to the extent any such liability arises after Purchaser shall have succeeded to Landlord's interest under the Lease;
or

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(viii) liable for any obligation of Landlord under the Lease accruing after an assignment by Purchaser of its interest under the Lease, provided such obligation has been assumed by Purchaser's assignee;

(b) Subject to Purchaser's acknowledgement of Purchaser's obligations Tenant hereby agrees to attorn to Purchaser, including Lender if it be the Purchaser, as its landlord, said attornment to be effective and self-operative upon Purchaser's succeeding to the interest of Landlord under the Lease without the execution of any further instruments. Subject to Purchaser's acknowledgement of Purchaser's obligations Tenant agrees, however, to execute and deliver at any time, and from time to time, as set forth in this Subordination, Non-Disturbance and Attornment Agreement, upon the request of Purchaser or any other holder(s) of any indebtedness or other obligations secured by the Mortgage, any instrument or certificate which, in its sole judgment, Landlord, Purchaser or such other holder(s), as the case may be, deems necessary or appropriate in any such foreclosure proceeding or conveyance in lieu of foreclosure or otherwise to evidence such attornment. Upon such attornment the Lease shall continue in full force as a direct lease between Tenant and Purchaser and the respective rights and obligations of Tenant and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth in the Lease, as modified by this Agreement.

(c) If a Purchaser shall succeed to the interests of landlord under the Lease by reason of a foreclosure or otherwise:

(i) The liability of Purchaser under the Lease for damages or otherwise shall be limited to Purchaser's interest in the Property including rents therefrom. Neither Purchaser nor any of the directors, officers, employees, shareholders, partners, principals, agents or servants of Purchaser shall have any liability (personal or otherwise) hereunder beyond Purchaser's interest in the Property.

(ii) No other property or assets of Purchaser or any property of the directors, officers, employees, shareholders, partners, principals, agents or servants of Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder or under the Lease.

5. Covenants of Tenant.

(a) Tenant agrees for the benefit of Lender that, so long as the Mortgage remains a lien upon the Property, Tenant will not:

- (i) pay any rent more than 30 days in advance of accrual;
- (ii) surrender Tenant's estate under the Lease unless expressly provided under the terms of the Lease;
- (iii) consent to any modification or amendment to the terms of the Lease without consent of Lender; or

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(iv) consent to termination of the Lease by Landlord thereunder, unless such termination is a unilateral termination by Landlord pursuant to the Lease.

(b) If any act or omission of Landlord would give Tenant the right, immediately or after notice or lapse of a period of time or both, to cancel or terminate the Lease or to claim a partial or total eviction or constructive eviction, Tenant shall not exercise such right and no notice of cancellation, termination or abatement of rents, additional rents or other sums shall be effective, unless and until:

(i) Tenant has given written notice of such act or omission to Landlord and Lender;

(ii) Neither Landlord nor Lender shall have cured the same within the time limits set forth in the Lease; and

(iii) Lender shall have failed to remedy such act or omission within a reasonable period of time, in light of both the time required to effect a remedy and the impact of the act or omission on Tenant's business operations or the Premises, following receipt of such notice.

(c) Tenant shall promptly notify Lender of any default by Landlord under the Lease or any circumstance which would entitle Tenant to cancel or terminate the Lease or abate the rents, additional rents or other sums payable thereunder at the same time as such a notification is delivered to Landlord.

6. Payment to Lender. After notice is given to Tenant by Lender that, pursuant to the Mortgage, the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies then due and to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby fully releases and discharges Tenant of, and from any liability to Landlord on account of any such payments.

7. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender and any Purchaser, and their respective heirs, personal representatives, successors and assigns.

8. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflict of laws.

9. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

10. Recording. This Agreement may be recorded in the Cook County, Illinois real property records by Tenant at Tenant's sole cost and expense. After the termination of the Lease, promptly upon request by Lender or Purchaser, Tenant shall, at Tenant's sole cost and expense, execute and record in the same office an instrument in a form reasonably requested by Lender or

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Purchaser to evidence that the Lease has been terminated and that this Agreement is of no further force or effect.

11. Consent by Landlord. Landlord is executing this Agreement for the purpose of (i) evidencing its consent hereto, (ii) agreeing to be bound by the provisions of Paragraph 6 hereof and (iii) acknowledging that nothing contained herein or resulting from the parties' performance hereof creates any offsets, defenses or claims under the Mortgage, the loan documents related thereto or the Lease. Lender and Tenant acknowledge that nothing contained herein is intended to modify the Mortgage or the loan documents related thereto. Lender acknowledges that Tenant has not received or reviewed the Mortgage or loan documents and that this Agreement constitutes the complete understanding between Lender and Tenant.

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IN WITNESS WHEREOF, the parties have executed the foregoing agreement as of the day and year first hereinabove written.

LENDER:

LANDESBANK HESSEN-THÜRINGEN
GIROZENTRALE

By: *Christopher S. Godlewski*

Name: Christopher S. Godlewski
Title: Vice President
Real Estate Finance

By: *William M. Scragg*

Name: William M. Scragg
Title: Vice President

TENANT:

Protocare Trials, Inc. formerly known as Protocare, Inc.

By: *Peter M. Januss*

Name: PETER M. JANUSS
Title: VP - Finance

Consent by Landlord:

LASALLE BANK NATIONAL ASSOCIATION
(f/k/a LaSalle National Bank, N.A.) as successor trustee as aforesaid and not personally

By: *Reta Edwards*

Name: RETA A. EDWARDS
Title: TRUST OFFICER

This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations covenants and/or statements contained in this instrument

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ALVIN W. BROWN
Vice President

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STATE OF New York)

ss.:

COUNTY OF New York)

On the 16th day of July, 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared Christopher S. Godlewski and William M. Scragg, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name ^{are} subscribed to the within instrument and acknowledged to me that ^{they} he executed the same in his capacity and that by ^{their} his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Julia C. Kuhn
Notary Public

JULIA C. KUHN
Notary Public, State of New York
No. 01KU5021194
Qualified in New York County
Commission Expires December 6, 20 01



STATE OF ILLINOIS)

ss.:

COUNTY OF COOK)

On the 11 day of July, 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared Peter Janss, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Traci Brandau
Notary Public

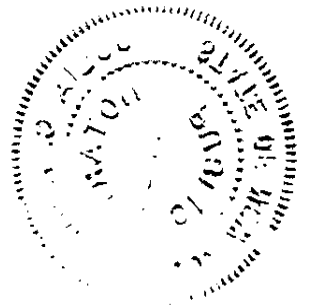


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Commissioner of Expiring Records, SO
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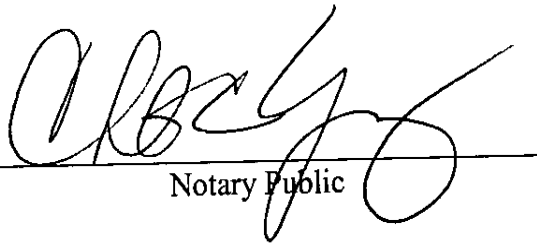


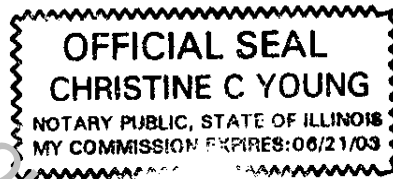
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STATE OF Illinois

COUNTY OF Cook ss.:

On the 19 day of July, 2000, before me, the undersigned, a Notary Public in and for said state, personally appeared RETA A. EDWARDS personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.


Notary Public



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Exhibit A

Legal Description

THAT PART OF LOTS 1 THROUGH 6, AND LOTS 10 THROUGH 12, ALL INCLUSIVE, TOGETHER WITH THE EAST-WEST ALLEY VACATED BY ORDINANCE PASSED APRIL 13, 1984 AND RECORDED AUGUST 3, 1984 AS DOCUMENT NUMBER 27199505, LYING SOUTH OF AND ADJOINING SAID LOTS 1 THROUGH 6 AND LYING NORTH OF AND ADJOINING LOTS 7 THROUGH 12, IN BLOCK 15, IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF BLOCK 15 AFORESAID; THENCE SOUTH 0 DEGREES 06 MINUTES 53 SECONDS EAST, ALONG THE WEST LINE OF SAID BLOCK, 110.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 110.00 FEET OF BLOCK 15 AFORESAID, SAID POINT BEING ALSO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL; THENCE SOUTH 89 DEGREES 52 MINUTES 51 SECONDS EAST, ALONG SAID SOUTH LINE, 141.40 FEET; THENCE SOUTH 44 DEGREES 52 MINUTES 51 SECONDS EAST, 6.20 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 114.38 FEET OF BLOCK 15 AFORESAID; THENCE SOUTH 89 DEGREES 52 MINUTES 51 SECONDS EAST, ALONG SAID SOUTH LINE, 5.25 FEET; THENCE SOUTH 44 DEGREES 52 MINUTES 51 SECONDS EAST, 147.81 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 15 AFORESAID, SAID POINT BEING 46.01 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE SOUTHEAST CORNER OF BLOCK 15 AFORESAID; THENCE SOUTH 89 DEGREES 40 MINUTES 45 SECONDS EAST, ALONG THE SOUTH LINE OF SAID BLOCK, A DISTANCE OF 46.01 FEET TO ITS SOUTHEAST CORNER THEREOF; THENCE NORTH 0 DEGREES 01 MINUTES 49 SECONDS WEST, ALONG THE EAST LINE OF BLOCK 15 AFORESAID, 219.07 FEET TO ITS NORTHEAST CORNER THEREOF; THENCE NORTH 89 DEGREES 52 MINUTES 51 SECONDS WEST, ALONG THE NORTH LINE OF BLOCK 15 AFORESAID, 301.44 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AREA = 44,101.2 SQUARE FEET OR 1.0124 ACRES.

KNOWN AS: 515 N STATE ST., CHICAGO, ILLINOIS.

17-10-123-013